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U.S. Citizenship
and Immigration
Services

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G3

FILE:

Office: HELENA

Date:

MAY 27 2004

IN RE:

Obligor:

Bonded Alien:

IMMIGRATION BOND:

Bond Conditioned for Voluntary Departure under § 240B of the Immigration
and Nationality Act, 8 U.S.C. § 1229c

ON BEHALF OF OBLIGOR:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The voluntary departure bond in this matter was declared breached by the Field Office Director, Detention and Removal (DRO), Helena, Montana, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on August 23, 2001, the obligor posted a \$500.00 bond conditioned for his voluntary departure. An order of the immigration judge (IJ) dated August 21, 2001, was issued granting the alien voluntary departure in lieu of removal on or before October 21, 2001. The bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On September 13, 2002, the BIA affirmed, without opinion, the IJ's decision and granted the alien voluntary departure within 30 days from the date of the order. On November 6, 2003, the alien petitioned for review of the BIA's decision before the 9th Circuit Court of Appeals. On December 3, 2003, the 9th Circuit Court of Appeals dismissed the alien's petition for review. On February 3, 2004, the field office director concluded the bond had been breached on January 3, 2004. The alien departed the United States on January 18, 2004.

On appeal, counsel asserts that he received the Form G-146 from the DRO in Idaho Falls, Idaho on December 12, 2003, and in turn the Form G-146 was received by the bonded alien on December 19, 2003 with notification from ICE that he had 30 days from the date of receipt to leave the United States.

The record does not contain any evidence to support counsel's assertion that ICE gave the bonded alien 30 days from the receipt of the Form G-146 dated December 12, 2003 to depart the United States. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Assuming, arguendo, that an extension of 30 days was granted by ICE, the alien would have had to depart no later than January 11, 2004 from the date of the Form G-146.

An appeal to the federal court of appeals does not stay the execution of the removal order unless the court orders otherwise. Section 242(b)(3)(B) of the Immigration and Nationality Act. As previously stated, on December 3, 2003, the 9th Circuit Court of Appeals dismissed the alien's petition for review.

The alien was granted 30 days from the BIA's order of September 13, 2002 to leave the United States. The alien did not leave as required on or before October 13, 2002. The field office director's decision of February 3, 2004 declaring the bond breached is valid.

The regulation at 8 C.F.R. § 1240.26(c)(3) provides that in order for the voluntary departure bond to be cancelled, the alien must provide proof of departure to the district director.

No satisfactory evidence has been introduced into the record to establish the alien made a timely departure. The service of a notice to surrender or the presence of a certified mail receipt is not required in voluntary departure bond proceedings.

Voluntary departure bonds are exacted to ensure that aliens will depart when required in lieu of removal. Such bonds are necessary in order for ICE to function in an orderly manner. After a careful review of the record, it is concluded that the alien failed to depart by the stipulated time, the conditions of the bond have been substantially violated, and the collateral has been forfeited. The decision of the field director will not be disturbed.

ORDER: The appeal is dismissed.